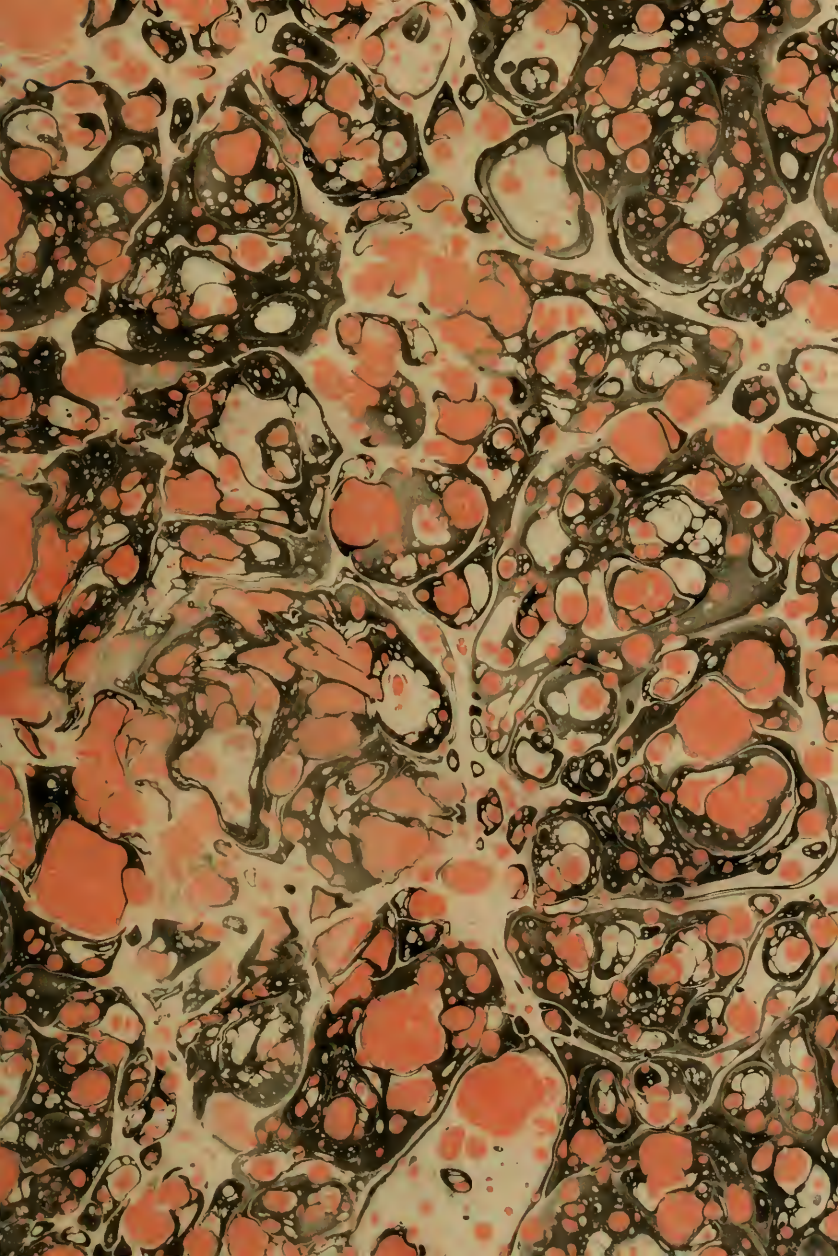




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A

D I A L O G U E

BETWEEN A

COUNTRY FARMER

AND A

JURYMAN,

ON THE

SUBJECT OF LIBELS.

*The Liberty of the Press, and the Rights of Jurymen, are
the Bulwark of the English Constitution.*

L O N D O N,

Printed for W. FLEXNEY, HOLBORN.

M D C C L X X.

AC 911.1770.D52

TO THE
SUPPORTERS
OF THE
BILL OF RIGHTS,
THIS LITTLE
CONVERSATION PIECE

Is most humbly dedicated, by

Their most obedient Servant,

THE AUTHOR.

A
D I A L O G U E
BETWEEN A
COUNTRY FARMER
AND A
JURYMAN.

C. PRAY, 'squire, was not you a juryman
in a cause wherein the King was plain-
tiff and David Ifaac defendant?

J. Yes.

C. What was the subject-matter?

J. It was an information against the defendant
for publishing a libel.

C. Pray what is a libel?

J. A little book.

C. Is

C. Is then the publication of a little book criminal ?

J. No.

C. Why then was you called upon to try the defendant, for publishing a libel, which you say is a little book, if it was not criminal ?

J. The publication of every little book is most clearly not criminal ; or else the publisher of Wake's Catechism, or the History of Robin Hood and Little John, would be criminal.

C. What then is it that makes it so ?

J. It is the malice, the falsehood, the wickedness, or the seditiousness of it, and the like, that constitutes the crime.

C. How can that be, when I heard my neighbour farmer Jones insist upon it, that he hath often heard my Lord Judge upon the bench declare, that the jury had nothing to do either with the malice, the falsehood, the wickedness, or the sedition of it. That that was all form ; and they were only to find whether the defendant did publish it.

J. You certainly must be mistaken ; for farmer Jones never could say any such thing.

C. I

C. I am sure he did ; for I was so much amazed at it, that I went home, and set it down on the first leaf of my Bible.

J. Reflect but a moment, and your own common sense will convince you of your error.

C. Common sense cannot overturn facts. The farmer did say so ; and I am positive of it.

J. Then let us reason the matter together.

C. With all my heart. I long to hear your opinion, as the affair seems to be of great consequence.

J. As you have often been upon a jury, I suppose you have not forgot that it is always customary for the jury to take an oath before the trial.

C. I remember it well. But the contents of the oath I do not now perfectly recollect.

J. I will tell you then. It is this : The jury swear, that they will well and truly try the issue joined between our sovereign Lord the King and the defendant, and a true verdict give, according to the evidence.

C. This oath seems to be a very serious affair.

J. Very serious, indeed ! and so it ought to be ; for on the due attention to this oath depends
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the life; liberty, and property of every Englishman.

C. Pray what do you mean by the Issue?

J. I mean, Sir, that case which the parties have agreed to refer to the jury's consideration; and which is reduced into a legal proper form. But lest you may not comprehend it clearly, I will give you the substance of the proceedings, whereby you will be the better able to judge what is meant by the word Issue. You must observe then, that the attorney-general sets forth, in the information he exhibits against the defendant, that he did, on such a day, publish a false, scandalous and seditious libel, the tenor whereof is as follows. And then he transcribes the paper or book he complains of *verbatim & literatim*, and puts such constructions upon it, by innuendo's, as he thinks will best answer his purpose. To this the defendant pleads, that he is not guilty in manner and form as the information states; and puts himself upon the country. And the attorney-general does the like. This is the Issue; and he submits the determination of it to twelve of his equals.

C. Pray

C. Pray what do you mean by the words manner and form ?

J. By the words manner and form, I apprehend, Sir, the defendant means to say that he did not publish a false, scandalous, and seditious libel.

C. How then can that be true which my neighbour farmer Jones told me ?

J. It cannot. For no honest judge will direct me to find the defendant guilty of the mere publishing the little book set forth in the information, when he knows I am sworn to try the issue between the parties joined, which is, whether the defendant did publish a false, scandalous, and seditious libel, and not whether he did publish the little book or paper set forth in the information, for that is not what I am sworn to try.

C. But pray Sir, when a person is indicted for murder, does not the indictment state, that the criminal was moved and seduced by the instigation of the devil.

J. Yes.

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Is

C. Is that part of the indictment necessary to be proved?

J. Most clearly not—nor is it necessary to set it forth in the indictment, as I conceive, for if those words were to be left out, and the indictment to state, that the criminal did on such a day murder a particular person therein named with malice prepense, I conceive the indictment would be as good and effectual in law, as if the words moved and seduced by the instigation of the devil were inserted.

C. If therefore these words which are generally inserted in indictments are not necessary to be proved, how comes it about that you so strenuously insist, that the attorney general is bound to prove that the little book, or paper, set forth in the information, is false, scandalous, and seditious?

J. I apprehend, that as every publication is not criminal, it is necessary to point out something in the publication you complain of to render it so, or else there is no difference in publications.

C. That is true—how then can you reconcile finding a defendant guilty of the bare publication

tion of a libel, or little book, when the information chargeth him with publishing, a false, scandalous, and seditious, libel, and not the least falshood, scandal, or sedition, has been proved.

J. I cannot reconcile it to my conscience.

C. Not when my lord judge tells you, you have nothing to do but to find the bare publication!

J. No—not if all the judges in Europe were to tell me so,—nor shall any man persuade me, that the words, false, scandalous, and seditious, are mere words of form, and nothing more.—If they have no meaning why are they put in? To insert words without a meaning would be ridiculous, and I am convinced in my own mind, that there is more in the words than jurymen are aware of, or else the uniform practice of putting them in informations would not have prevailed from the first commencement of that mode of prosecution to the present Æra.

C. Have you never heard what altercations there have been about the word *false*?

J. Yes,

J. Yes, and I very well remember, that in the case of the king and Owen, Mr. Pratt, (now lord Camden) insisted upon it, that as the word false was put in the information, the prosecutor was bound to prove it so, or the defendant ought to be acquitted.

C. And what did the judge say upon the occasion?

J. What did he say! He said the jury had nothing to do but to find the publication.

C. Did they find the publication?

J. No—they knew and maintained the rights of an English jury—they found him not guilty, tho' the bare fact of publishing was proved as clear as possible,—upon which the then attorney-general addressed himself to the jury, and said, “ gentlemen, do you mean to say that the defendant did not publish the paper, or little book set forth in the information?”—We find him not guilty.—“ Do you say he did not publish it?”—We find him not guilty,—this is our verdict, and we will abide by it.

C. And what do you mean to infer from thence?

J. I

J. I mean to infer, that if the simple fact of publishing was the only thing the jury had to do with, the court upon application would have set the verdict aside, as being against evidence, and the prosecutor would not have been backward in making such application,—but he was too prudent, for he knew the jury had a right to determine whether it was a libel or not, as much as they have a right to determine whether a person is guilty of murder. And every one knows, that the bare act of killing does not amount to murder, any more than the mere publishing a little book amounts to a crime.

C. Pray, Sir, does not the information sometimes alledge, that the libel or little book was published with an intent to scandalize government.

J. Yes.

C. Is it necessary to prove the intent?

J. I think it is---for I very well remember in the case of Simmons the Jew, who was indicted for putting ducats into Ashley's pocket, with an intent to charge Ashley with felony. The judge, I think his name was Foster, told the jury, that unless

less the prosecutor proved the ducats were put into Ashley's pocket with the intent laid in the indictment, they must acquit him; "for," said the judge, "the intent is the principal thing to be considered."—There is no harm in the bare putting ducats into another man's pocket.—It is the intention with which they are put there that constitutes the crime.—There is another case I remember, and that a very recent one too — A man in Westminster-hall was indicted for making an assault upon Counsellor Stow's boy with an intent to commit sodomy; in which indictment there were several counts, one for an assault, another for an assault with an intent to commit sodomy.—The defendant was acquitted upon the last count, and found guilty of assaulting only, and for no other reason than because the intent was not proved.—Now, I apprehend, that if the defendant had been charged only with an assault to commit the crime alledged in the indictment, and there had been no other count, the defendant must have been acquitted.—The same rule prevails in the case of an indictment for an assault with an in-

tent;

tent to commit a rape, if the intention be not proved, the defendant must be acquitted. The case of parson Prick is so remarkable, that I cannot omit it upon this occasion: In a sermon he preached, he recited a story out of Fox's Martyrology, that one Greenwood, being a perjured person, and a great persecutor, had great plagues inflicted upon him, and was killed by the hand of God: Whereas, in truth, he never was so plagued, and was himself present at that sermon; and he thereupon brought his action upon the case for calling him a perjured person; and the defendant pleaded not guilty. And this matter being disclosed upon evidence, Wray, chief justice, delivered the law to the jury, that it being delivered but as a story, and not with any malice or intention to slander any person, he was not guilty of the words maliciously, and so was found not guilty. — From these cases it plainly appears, that the law considers the intention in criminal as well as civil prosecutions.

C. This

C. This doctrine appears very reasonable I confess. But how stands the law with regard to libels, for that is the matter in question.

J. Upon the same principles—for reason and law are so inseparably united, that it is not possible for the latter to exist a moment without the assistance of the former.

C. How can that be? when the farmer told me, that the more true a libel was, the greater the offence :

J. He might tell you so, but the farmer was out of his senses when he said it.

C. Not he truly! He is as arch a fellow as any in our country.

J. To convince you that truth is not always rejected by the law, though the farmer has told you it is in the case of a libel, I will give you a narrative of a case which really existed in Worcestershire, and for the truth of it I appeal to every gentleman upon the Oxford circuit.—One Bearcroft an attorney, very well known in that part of the world, said, that a particular person, by name, had stole a bank-note from Sir John Packington. The man was informed
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of what Bearcroft had said, and thereupon brought his action against him.—The declaration stated, that Bearcroft had falsely, wickedly, and maliciously uttered, published, and spoke, in the presence of his Majesty's leige subjects, of and concerning the plaintiff, that he, the said plaintiff, had stole a bank-note from Sir John Packington. — Bearcroft defended the action, justified and proved the words ; but there being many other justifications, some, or one of which he did not prove, the jury found a verdict for the plaintiff, with damages, to the amount of two or three hundred pounds ; at which the judge expressed very great surprize, and instantly declared, he could see no other reason for giving such excessive damages, but to enable the plaintiff to buy off the felony.

C. Pray, Sir, can any one justify publishing a libel if it be true ?

J. The lawyers say no—though they all agree, he may justify speaking and publishing the same words if not reduced into writing.

C. Pray, where is the mighty difference between writing and speaking the truth.

J. By writing the truth, it circulates more freely than by speaking.

C. Is that the reason why it is more criminal to write than to speak it ?

J. Yes.

C. Then the law is made for the suppression of truth.

J. I hope not. The law considers what is written, as the cool deliberate act of the mind, but imputes speaking to indiscretion and passion.

C. This is no reason why a man may not both write and speak the truth.

J. Most certainly not. But the law faith truth may be defamatory.

C. I cannot entertain so absurd an idea of the law.

J. Possibly you may be fond of defamation.

C. No. I consider the reputation of a man like a woman's virtue, susceptible of the least impression, and think it can never be spoken of with too much tenderness. He who takes pleasure in propagating reports to the prejudice of his

his neighbour's credit, is an enemy to sociey ; and, as the judge said of the poor weavers, ought to be punished with FIRM, STEADY, AND UNREMITTING SEVERITY.

J. I am clearly of your opinion.

C. But still 'squire, this does not satisfy my doubts. Libels are generally pointed at men in office, who are appointed to manage the affairs of the nation, and I see no reason why their conduct should not be open to enquiry.

J. It is open to enquiry ; they are as much responsible to the public for their behaviour as a servant to his master.

C. How can that be, when you are harrassed to death with informations, if you but mention their names, or even hint at their proceedings ?

J. Why that's true.

C. Suppose a great man had betrayed his trust, embezzled the public treasure, sacrificed the rights of his fellow-subjects, or imposed upon his sovereign to induce him to exercise that prerogative which was vested in him for the benefit of the people in favour of the most abandoned wretch,

wretch,——Would it be criminal to state this man's conduct to the public ?

J. I hope not— that doctrine might suit an arbitrary government, but it seems irreconcilable to the principles of a free state, and the genius of the English people.

C. Pray, Sir, Have you never heard of such a person as Mr. Hampden ?

J. Yes. He was a great good man, who stood forth in defence of the rights of the people, and in support of the laws of the land.

C. Upon what occasion ?

J. When the judges declared that it was lawful for the King to levy ship-money without the consent of parliament, he insisted that it was unconstitutional, and refused to pay it—He not only spoke, but wrote against the measure ; and if it had been criminal in him to have wrote against such a proceeding, the people of this country might have groaned under the yoke of an arbitrary government to this day.

C. How did he prevent it ?

J. By opening the eyes of the public.

C. And what was the consequence ?

J. He

J. He died a martyr to the laws and liberties of his country, lamented and beloved.

C. And could he die in a better cause?

J. No—he can never die too soon, said a great man, who lays down his life in support and vindication of the honour, the policy, and the constitution of his country.

C. But pray, Sir, what do you mean by supporting the constitution of your country?

J. By opposing every innovation that is made upon the law of the land; and writing and speaking with candor, upon all occasions, against those men who broach a doctrine subversive of it. And here, Sir, give me leave to say, the freedom of the press can never be exercised with more propriety: it answers the purpose of a beacon to give the alarm to the public.

C. Who then can oppose the freedom of the press, when it is calculated to answer such ends.

J. No honest man — Your Jefferies's, and such like wretches, were the persons who lived in fear of the press: convinced that their actions would not bear a public scrutiny, they opposed every
every

every method likely to set their conduct in a true light.

C. To be sure no wicked man loves to have his character painted in its proper colours ; and that will induce him to exert every method for suppressing the freedom of the press ; but such an honest upright man as Holt lived superior to every attack of the press. Clothed with innocence, and conscious of having acted from an upright motive, he bid defiance to every thing that malice could suggest, or the press produce.

J. You seem tolerably well acquainted with the character of this gentleman, farmer.

C. Yes, master, I am. In short there has been such a deal of talk in my neighbourhood about what he did in support of the freedom of this country, that I have thought it worth my while to purchase the history of the times he lived in, for my information ; and I find that the honest historian has transmitted him to posterity as a character worthy of imitation.

J. That's the consequence of acting with firmness in a good cause.

C. But

C. But pray, 'squire, are there not a great many other men in power, besides such as I spoke of, who have lived in fear of the press?

J. Yes—statesmen and politicians have trembled at the name of it.

C. Why were they so frightened at it?

J. Because they knew it was the only method the people of a free country had of laying their conduct before the public, and subjecting it to an inquiry, their situations in every other respect placed them superior to.

C. For that reason I think the liberty of the press ought to be encouraged; for if it can produce those salutary effects you have alluded to, it is the strongest and the most persuasive argument an honest man can use, in the support and encouragement of it; and, on the other hand, I know no cause so likely to influence a wicked man, in opposition to that freedom, as its being instrumental in bringing to light those very proceedings he wishes to conceal.

J. Why faith, farmer, I cannot say but I am of your way of thinking; for if a minister of state had done nothing but what was
right,

right, he'd never be ashamed of his conduct being made notorious to the public. It is a guilty conscience that always suggests the necessity of secrecy.

C. Ah, master, you dare say more than ever I dared to think.

J. How so, farmer ! I dare say more than you think ! God forbid ! I hope there is not an Englishman but would utter his sentiments upon public measures with freedom and decency.—When that privilege is taken from us, farewell Old England, and the liberties of the people.

C. 'Squire, you do my heart good to hear you talk. It is so pleasing to an Englishman to speak his mind upon all occasions, that if he was once to lose that power, it would break his spirit, and sink him into a mere state of ignorance and barbarity.

J. Don't you know, farmer, that ignorance and superstition are the support of power, and the very pillars of an arbitrary government.

C. I have heard so.—And I suppose that's the reason why a man that dares publish the truth is put in the crown-office.

J. Yes

7. Yes—and I know no method that can be so effectually made use of for the suppression of truth, as the prosecution by information. For if a man is not possessed of a large fortune, an engagement or two with the crown, in criminal prosecutions of that kind, will bring him very near the brink of destruction. If he fails, he pays the crown costs ; if he succeeds, he has only to comfort himself, that what he has done has been applauded by a jury ; and it has cost him the Lord knows what in making his innocence appear to the public.

C. Why, master, you frighten me almost out of my wits : I thought every man that was cast paid the costs.

7. In most civil cases they do ; and in some criminal prosecutions : but in the case of an information, exhibited by the attorney-general, though the defendant was as innocent as the child unborn, of the crime laid to his charge, and that innocence appeared to the satisfaction of the jury who tried him ; yet he must pay his own costs ; for the attorney-general, who sues in

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the king's name, never pays any costs, however groundless the prosecution may appear.

C. And does such an officer as this exist in the land of liberty ?

J. Yes——to the terror of his majesty's subjects. I tell you, farmer, it is not possible for a man who is ignorant of the laws of his country, to conceive the immense power this officer is possessed of. You will tremble almost, when I tell you, that he may file an information against you for publishing the most trivial production ; oblige you to appear, and take a copy of the information, though at a most enormous expence ; and after all, when he finds that the cause of complaint is insufficient, or that he is incapable of producing evidence to support the charge, he may enter a *Nolle prosequi*.

C. Pray what do you mean by a *Nolle prosequi* ?

J. A *Nolle prosequi*, farmer, is no more or less than this : the attorney-general enters upon record, that he is unwilling to proceed any further in the information exhibited against the defendant ;

fendant ; or, in other words, it signifies that he has no witnesses to convict him.

C. Why then, I suppose, after he has entered a *Nolle prosequi*, there's an end of it.

J. No faith, farmer, there is not. That is the hardship of it. He may play the same game over again ; file the same information ; compel an appearance ; force the party to take a copy, and then sue out another *Nolle prosequi* ; and so harrafs him eternally with informations and *Nolle prosequi's*.

C. Pray was this ever practised ?

J. Yes——But whether it has or has not, is quite immaterial. The attorney-general has a power of doing it ; and whether he exercises it or not, is a matter of very great indifference to me. He may do it if he thinks proper. I confess I'm one of those who never wish to see any man armed with a power of injuring an innocent man : it can answer no good end ; and may be applied to the worst purposes.——And now, farmer, as it begins to grow late, and I have taken some pains to explain the nature of libels, the power of juries, and the nature of the attorney-

ney-general's office, I hope you will excuse me if I take my leave of you for the present, and submit to your candid perusal what a great man once advanced.—— “ All attempts to destroy or restrain the liberty of the press, are acts of notorious ingratitude to Providence ; and, in effect, opposing the watchful care of Heaven, which has pointed out this, as the most effectual means of enlarging human understanding. And as it has been acknowledged, by almost every considerate writer on the subject, that the glorious reformation from popery could not be thoroughly accomplished and completed all at once ; if any set themselves industriously to disgrace the only means by which it can ever be perfected, what is this but being tools and drudges for the enemy, and supplanting the protestant cause ? For the liberty of the press is one of the strongest barriers of the liberties of nations and churches. It helps us to settle clearly the proper boundaries of power, and the just measures of subjection. It is the means of discovering to public view the most artful schemes of tyranny ; and lets the body of the people, who
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are naturally apt to be too indolent, into the most crafty designs that are formed for undermining their liberties, excites in them a noble spirit of self-defence, and frequently checks the insolence, and strikes terror in the hearts of tyrants.

“ The truth of these observations is undeniably confirmed by the history of our own nation. For what had a greater share in preparing the way for the glorious revolution, from whence we may date the establishment of all the valuable rights we enjoy, both as Englishmen and protestants, than those free and judicious discourses on government, and against the superstitions and oppressions of the church of Rome, which were printed and published in the two preceding reigns? The vast importance of this branch of liberty is clearly shewn, by observing, that aspiring churchmen, and corrupt ministers of state, have always been its bitterest enemies; well knowing that if the common herd of subjects could be kept entirely in the dark, they might be the more easily brought to adore the PURPLE, swallow the absurd doctrines of indefeazable hereditary right, and unlimited passive obedience.

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“ The genuine and immediate tendency of the freedom of the press is, to banish imposture of all kinds, and establish the empire of truth without a rival. Whereas if this liberty be arbitrarily restrained, this, in effect, is saying to truth—*Keep where thou art ; hitherto shalt thou go, and no further ;* and error will remain seated on its throne of darkness, without the least possibility of a reformation.”

F I N I S.

